IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

RSA.No. 505 of 2007()

AS.131/2006 of I ADDL. DISTRICT COURT, PALAKKAD
OS.187/2002 of PRINCIPAL SUB COURT, PALAKKAD

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APPELLANT/ 2ND APPELLANT/ 1ST DEFENDANT;

THE NOORANI PLAY GROUND SAMRAKSHANA SAMITHY, REPRESENTED BY THE SECRETARY AND THE PRESIDENT NOUSHAD, AGED 31 YEARS, S/O. LATE SAIDU MOHAMMED, 20/208, HUDA NAGAR, PUTHUPPALLY THERUVU, NOORANI POST, PALAKKAD DISTRICT.

BY ADV. SRI.K.ABDUL JAWAD
SRI.U.MUHAMMED MUSTHAFA

RESPONDENTS/ 1ST APPELLANT & RESPONDENTS/2ND DEFENDANT,PLAINTIFF & DEFENDANTS 3 AND 4

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1. PRESIDENT, MUJIB RAHIMAN, AGED 33 YEARS, S/O.ABDUL KHADER, RESIDING AT 20/208, HUNDA NAGAR, PUTHUPPALLY THERUVU, NOORANI POST, PALAKKAD DISTRICT.

2. N.R.RAMASWAMY, AGED 52 YEARS, S/O.LATE RAMASESHAN, RESIDING AT 24/437, NEW STREET, NOORANI.

3. P.S.F.C. CLUB PALAKKAD-REPRESENTED BY ITS PRESIDENT, PRIYESH KUMAR (LAL), AGED 30 YEARS, KALYAN TOURIST HOME, G.B.ROAD.

4. SAIDALI, AGED 67 YEARS, S/O.VEERA SAHIB AT FAIZAL HOUSE, PULAI PARAMBIL NOORANI, PALAKKAD.

BY ADV. SRI.S.SREEKUMAR FOR R2
SRI.BABU S. NAIR FOR R1

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION

ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.No.329/2007 in R.S.A.No.505/2007

27.6.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S to Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 505 OF 2007

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Dated this the 27th day of June,2007

JUDGMENT

First defendant in O.S.187/2002 on the file of Sub Court, Palakkad is the appellant. Second respondent is the plaintiff. Respondents 1, 3 and 4 are the other defendants. Second respondent instituted the suit seeking a decree for permanent prohibitory injunction. The plaint schedule property is 1 acre 83 cents in survey Nos.1210, 1211,1212, 1213, 1214/1 and 1981/1 and 1982 of Pirayiri Village. Second respondent contended that the predecessor of the second respondent was running High School under the name and style 'Nurani Hindu High School' and plaint schedule property was being used as the playground of the school and the management of the school was carried on, as per the terms of Ext.A1 the family karar entered into between Sundaram Pattar, and Ramaswamy Iyer and subsequently Sudaram Pattar

surrendered his rights in favour of Ramaswamy Iyer under Ext.A2 registered surrender deed and the property thus devolved on Ramaswamy Iyer and on his death, it devolved on his sons Ramaseshan and Lakshmana Iyer and second respondent is the only son of Ramaseshan and the other co-owner is Ramaswamy, son of Lakshmana Iyer and on his behalf also second respondent is mangaing the property. While the school was being managed, it was closed in 1986 after complying with the formalities provided under Kerala Education Act. It was challenged by the Government and management was taken over which was challenged before this court and was the subject matter in O.S.184/1987 before Sub Court, Palakkad. This court directed the Government to handover the school to second respondent. It was challenged by the Government before Supreme Court. Supreme Court confirmed that order and Government was directed to close down the school by June, 1997 and hand over the properties to the owner. Thereafter the father of the second

respondent and Ramaswamy Iyer filed I.A.2892/1997 in O.S.184/1987 for a direction to the Government to handover the possession of the property and on 20.10.1987, it was allowed under Ext.A3 order and the property was handed over to the father of second respondent. After obtaining possession, father of second respondent demolished the building and applied for sanction for construction of the residential lay outs in the entire property including the plaint schedule property. Palakkad Municipality granted the permission. Contending that respondents attempted to trespass into the property claiming that the property is being used as football ground from time immemorial, second respondent approached this court by filing O.P.38465/2001 for a direction to the Police officials to give adequate police protection. As per Ext.A5 judgment, the petition was disposed by this court directing second respondent to approach the civil court seeking a appropriate relief. Thus the suit was filed seeking a decree

for permanent prohibitory injunction. It was contended that third defendant had filed O.S.951/2001 before Munsiff Court, Palakkad and obtained an order of injunction in respect of the plaint schedule property and after the second respondent appeared and contested the suit, the suit was dismissed and is defendants attempted to trespass into the property and they have no right. Defendants filed a written statement admitting that the family of the second respondent was running the school under the name 'Nurani Hindu High School' and plaint schedule property was being used as the playground of the school. It was contended that second respondent has no right, title or possession to the plaint schedule property and Ext.A1 family karar relates to only other properties of the family and plaint schedule property is not the property of the second respondent but is a Government land. It was further contended that they are not aware the granting of sanction by the Government or Municipal authorities and even if

there was any such sanction, second respondent is not entitled to claim any title on that sanction. It was also contended that plaint schedule property belongs to the Government along with 3 acres 19 cents of play ground which was taken possession by the Government and therefore second respondent is not entitled to the decree sought for. It was contended that in 1951, 3 acres 19 cents adjacent to the plaint schedule property was acquired by the Government, subsequently that land was surrendered by the family of second respondent to the Government and as plaint schedule property was acquired and given to the family of second respondent for using as a play ground and as that purpose was brought to an end, it should be surrendered to the Government and second respondent is not entitled to claim any title and should surrender it to the government and second respondent is not entitled to claim any right or title to the property or entitled to a decree for injunction.

2. Learned Sub Judge framed the necessary issues. On the evidence of PW1, Dws. 1 and 2 and Exts.A1 to A11 and B1 to B4 and X1 and X2 learned Sub Judge granted a decree restraining defendants from trespassing into the plaint schedule property or causing any hindrance to the possession or development of plaint schedule property. It was found that as per Ext.A3 order in O.S.184/1987, Sub Court directed to handover possession of the school building and the appurtenant land to the father of the second respondent and pursuant to Ext.A3 order, possession of the property was taken and it was held that second respondent is entitled to the decree. Learned Sub Judge found that second respondent established the title to the plaint schedule property as well as possession subsequent to 1987. Suit was decreed. The decree and judgment were challenged before District Court, Palakkad in A.S.131/2006. In the appeal, appellants filed I.A.1598/2006 an application to receive additional evidence under Rule 27 of Order

41. Learned District Judge on hearing the appeal found that additional evidence cannot be admitted. On reappreciating the evidence, learned District Judge confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the Second Appeal.

3. Learned counsel appearing for appellant and learned counsel appearing for second respondent were heard.

4. Learned counsel appearing for appellant argued that the documents produced as additional evidence would establish that subsequently the Tahsildar sent a report to the Government stating that the original certificate of the Tahsildar on which Ext.X2 order was passed by the Government to handover possession and it was issued under suspicious circumstance and as plaint schedule property form part of the Government land, courts below should not have granted a decree for injunction.

5. Learned counsel appearing for second

respondent argued that both the trial court and first appellate court, on appreciating the evidence entered a factual finding that second respondent has title to the property and that factual finding cannot be interfered in exercise of the powers of this court under section 100 of the Code of Civil Procedure. It was further argued that under Ext.X2 order, the Government has already concluded that plaint schedule property belongs to second respondent and therefore there is no reason to interfere with the decree and judgment passed by the courts below.

6. On hearing both the counsel,I do not find any substantial question of law involved in the appeal.

7. Appellant is disputing the right of second respondent on the basis that plaint schedule property was acquired for the purpose of the school and as the school was closed, the purpose has come to an end and so the property belongs to the Government and second respondent is

not entitled to the decree for injunction. It was also argued that as Ext.A11 is an unregistered document, second respondent is not entitled to claim any right over the plaint schedule property based on Ext.A11. Learned counsel appearing for respondent relying on Section 17(2) (vii) of Registration Act,1908 argued that Section 17 which provides for compulsory registration of the documents is not applicable in respect of any grant of immovable property by government and therefore non-registration of Ext.A11 will not effect the title claimed by the second respondent and Government Grants Act, 1895 exempts the provisions of Transfer of Property Act in respect of any grant or transfer of land belonging to the Government and therefore non-registration of Ext.A11 will not effect the title. Learned counsel appearing for appellant on the other hand argued that because of the statement of reasons in the Act, it is clear that all the provisions of Transfer of Property Act are not exempted under section 2 and therefore it

is to be found that second respondent has no title.

8. Appellant is not claiming any independent right over the plaint schedule property. The only contention is that property belongs to the Government and therefore only Government has right and title over the plaint schedule property and second respondent did not derive any title to the property. But Ext.X2 order passed by the State disproves that intention. What was argued was that, Ext.X2 order happed to be passed by the Government on a mistaken report submitted by the Tahsildar, which was subsequently corrected by another Tahsildar and the matter is pending before the Government. If that be the case,and Government has right over the property, this decree and judgment will not affect the right of the Government over the property, as Government is not a party to the suit. The courts below on appreciating the entire evidence entered a factual finding with regard to the title and the entitlement of the decree for injunction. That

cannot be interfered with in exercise of the powers under section 100 of the Code of Civil Procedure. As the State is not a party to the suit or the appeal, the decree will not affect the right of the State to get possession of the property, if State has any such right. Hence no interference in the decree is called for.

The Second Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

R.S.A.NO.505 /07

JUDGMENT

27TH, JUNE,2007